

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

INTERNATIONAL BROTHERHOOD OF	)	
ELECTRICAL WORKERS, LOCAL 702,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Public Case No. R 92-006
	)	
CITY OF SIKESTON,	)	
DEPARTMENT OF PUBLIC WORKS,	)	
	)	
Respondent.	)	

**JURISDICTIONAL STATEMENT**

This case appears before the State Board of Mediation upon filing by International Brotherhood of Electrical Workers, Local 702, of a petition for certification as public employee representative for all production, construction and maintenance employees of the City of Sikeston. A hearing was held on March 18, 1992, in Sikeston, Missouri, at which representatives of the Union and the City were present. The case was heard by State Board of Mediation Chairman Mary L. Gant, Employer Member Milton O. Talent, and Employee Member Donald N. Kelly. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo 1986. At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact, and conclusions of law.

**FINDINGS OF FACT**

The City's Department of Public Works is subdivided into four divisions: streets, parks, garage and planning. Each of these divisions has a division head who is responsible for managing the day-to-day operations of the division. The division heads of the aforementioned divisions are the street superintendent, the parks and recreation

director, the vehicle maintenance supervisor and the city planner. Each of these division heads reports to Doug Friend, the Director of the Department of Public Works. Friend oversees the entire department and ensures that each division stays within its allocated budget.

The garage division maintains the City's motor vehicles. Two employees work in this division -- a mechanic and the vehicle maintenance supervisor, Steve Wilson. Both diagnose mechanical defects and make the required repairs. Additionally, Wilson is responsible for managing the day-to-day operations of the garage. This involves planning future mechanical work (i.e. implementing the ongoing vehicle maintenance program), recording vehicle maintenance information, maintaining the inventory of parts and supplies in the garage, generating reports and performing other related functions. Wilson ensures that all City vehicles and equipment are properly maintained in a timely manner. He coordinates vehicle needs for the various City departments and establishes a schedule for the work to be completed. Wilson oversees all the mechanical work performed in the garage to ensure it is properly done. Wilson is also responsible for managing the garage division's budget. If something needs to be purchased for the garage, he can purchase items up to \$100.00. The mechanic is not authorized to make purchases. The vehicle maintenance supervisor makes recommendations to the Public Works Director concerning major capital improvements for the City's fleet.

The street superintendent has two subordinates known as crew leaders. The parks and recreation director also has a crew leader. The two crew leaders in the street division are Vance Raines and Charles Parks. The name of the crew leader in the parks division is not contained in the record. The heads of the streets and parks divisions have delegated much of their division's day-to-day activities to these crew leaders. Consequently the crew leaders plan, schedule and organize jobs in their respective divisions. They determine the number of workers needed at a given job site, issue specific job assignments to the members of their crew and ensure that their work is

performed adequately. Additionally, the crew leaders are responsible for seeing that new employees are properly trained. The three crew leaders rotate being on 24-hour emergency on-call status. When a crew leader is on call, he is the contact person for public safety in the event of wind, storm, snow or fallen limbs. When an emergency arises, the crew leader is responsible for assessing the situation and deciding the number of crew members needed as well as what equipment is required. The two crew leaders in the street division spend less than half of their time participating in actual crew member work. The crew leader in the parks division rarely works alongside his five crew members. The amount of time crew leaders spend working side-by-side with the crew members is discretionary with the individual crew leaders. Crew leaders are paid a dollar to a dollar and one-half more per hour than members of their crew. The vehicle maintenance supervisor makes a higher salary than the crew leaders.

Like the vehicle maintenance supervisor, crew leaders have purchasing authority. They can determine what materials they want or need for their division. Purchases under \$25.00 can be made without prior approval, while purchases over \$25.00 require the use of a purchase requisition form signed by Friend. No employee below the level of crew leader is empowered to prepare and submit a purchase requisition form. Crew leaders maintain gasoline credit cards which they distribute at their discretion and thereafter monitor the receipts.

The vehicle maintenance supervisor and crew leaders have been told that management considers them supervisors. They have received supervisory training and participated in meetings of City supervisors. They have been designated as the Employer's first step grievance representative under the City's grievance procedure, and have been told they are empowered to resolve grievances. The record does not contain any instances though of their doing so.

The vehicle maintenance supervisor and crew leaders are responsible for reviewing and approving crew member requests for time off such as vacation and sick

leave. Additionally, they maintain time cards and verify the accuracy of actual work done. Finally, they schedule and approve overtime.

The vehicle maintenance supervisor and crew leaders participate in the hiring process as follows. Whenever a job opening exists, Friend receives a list of pre-screened candidates from Job Service. Friend then passes this list on to the division head. The division head then consults with the crew leaders to determine who they want to interview from the list. This group of applicants is then interviewed by an interview board. There is no formal system in the City as to who makes up the interview board. Usually, though, the interview board is comprised of the appropriate division head, a crew leader, and sometimes a third person. No one below a crew leader sits on the interview board. All the participants on the interview board then assess the qualifications of the candidates in writing. Each interview board member ranks the candidates in order of preference, along with comments indicating which candidates they feel is most qualified or best suited for the job opening. These assessments of the candidate are then passed on to Friend, who reviews them and makes the decision of who to hire based on the written recommendations of the board members. If there are discrepancies or disagreements among the interview board members regarding the candidates and their rankings, Friend meets with the board members for the purpose of resolving whatever disagreement may exist concerning who to hire. In the hirings documented in the records, the candidates receiving bad marks by crew leader Raines were rejected and his number one candidate was hired. Similarly, the three candidates "not recommended" by crew leader Parks were rejected and his recommendation for the number one candidate was likewise followed.

The vehicle maintenance supervisor and crew leaders can effectively recommend discipline for the employees under their direction. If they decide disciplinary action is warranted, they write up the incident and make a recommendation to Friend, who makes the actual decision to impose discipline. In the one disciplinary incident

documented in the record, crew leader Raines recommended in writing that an employee be terminated for striking another employee. Friend's subsequent investigation in the matter was limited to simply determining whether the incident, in fact, occurred. After he determined that the triggering event did occur, Friend deferred to Raines' recommendation and the employee was discharged.

The vehicle maintenance supervisor and crew leaders are responsible for evaluating the employees under their direction. On average, they conduct written performance evaluations twice a year. This involves ranking the employee's job performance according to a grading system found on the evaluation form. Afterwards, they conduct a conference with the employee to discuss the evaluation. During this conference they identify the employee's strong, weak and improvement areas and discuss how the employee can increase his productivity. The ratings that employees receive on these evaluations result in a point total. This point total affects an employee's merit pay increase. The City's merit pay system is based entirely on the score generated by the performance evaluation. As a result, the score on the performance evaluation determines how much merit pay the employee will receive. So far as the record shows, these evaluations are not reviewed or changed by anyone else in management.

In addition to the evaluations noted above, the vehicle maintenance supervisor and crew leaders are also responsible for determining when an employee has reached a level of competency to advance out of probationary status into regular full time status. This change in status involves a salary adjustment.

### **CONCLUSIONS OF LAW**

International Brotherhood of Electrical Workers, Local 702 petitioned to be certified as public employee representative of a bargaining unit comprised of all production, construction and maintenance employees in the Public Works Department of the City of Sikeston. At the hearing, the parties essentially modified the wording of

the petitioned-for bargaining unit to the following: all skilled workers, maintenance workers, mechanics, mechanic helpers and skilled laborers, but excluding supervisors, clerical employees, professional employees and all other employees of the City.

An appropriate bargaining unit is defined by Section 105.500(1) RSMo 1986 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

In this case there is no dispute concerning the appropriateness of the bargaining unit. Accordingly, we hereby hold that the aforementioned unit is an appropriate bargaining unit within the meaning of the Missouri Public Sector Labor Law.

At issue here is whether the vehicle maintenance supervisor and three crew leaders should be included in the above described bargaining unit. The City contends they should not be included because of their supervisory status, while the Union disputes this assertion.

Although supervisors are not specifically excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion. See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d (Mo.App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976). This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise. Since the City contends that the vehicle maintenance supervisor and three crew leaders are supervisors, it is necessary for us to determine if such is, in fact, the case.

In making this decision, this Board historically considered the following factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.

- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters.
- (3) The number of employees supervised, and the number of actual persons exercising greater, similar or lesser authority over the same employees.
- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees.
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.<sup>1</sup>

We will do so here as well. Not all of these criteria need to be present for a position to be found supervisory. Rather, in each case the inquiry is whether these criteria are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.

Applying these criteria to the vehicle maintenance supervisor and three crew leaders, we conclude that, on balance, they meet this supervisory test. Our analysis follows.

Attention is focused initially on factor (2), the authority to direct and assign the work force. There is no question that the vehicle maintenance supervisor is in charge of the mechanic and the crew leaders in charge of the employees on their crews. Practically speaking, they direct these employees on a day-to-day basis in the performance of their work activities, oversee the work they perform and ensure that they perform it correctly. They can, and do, assign these employees to various job tasks, some of which presumably is less desirable. Additionally, they grant employee sick leave and vacation requests, approve overtime and train new employees. While there are no documented instances in the record of this happening, management has told them they are empowered to resolve employee grievances. In our view, at least some

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<sup>1</sup> See for example City of Sikeston, Case No. R 87-012 (SBM 1987).

of the foregoing responsibilities involve the exercise of independent judgment and discretion.

Next, with regard to factor (3), the number of employees being directed by the vehicle maintenance supervisor and crew leaders varies from a low of one for the vehicle maintenance supervisor to a high of five for the parks crew leader. While one on one supervision (as exists at the garage) is certainly not the norm in the public sector, in this case it is attributable to the small size of the City's garage.

With regard to the level of pay (factor 4), it is noted that crew leaders earn a dollar to a dollar and a half more per hour than their crew members. The vehicle maintenance supervisor is paid more than the crew leaders. In our opinion, this higher rate of pay for both these positions is due in part to their directing the work force and performing duties not performed by others in their division.

Attention is now turned to factors (5) and (6) above. As previously noted, we have already found that the vehicle maintenance supervisor and crew leaders supervise the work of those employees underneath them in the Employer's chain of command. While they do spend some of their time on actual hands-on work identical to that performed by their crew members, they are also responsible for directing the employees, assigning them work and ensuring that they perform it correctly. What we have just described though is the classic example of a leadworker (i.e. someone who supervises a work activity). Leadworker status in and of itself is sufficient to convey supervisory status. Instead, supervision of employees is required. That being so, if the foregoing leadworker duties were the extent of the management responsibilities for the vehicle maintenance supervisor and the crew leaders, we would be hard pressed to call them supervisors. However, they have additional responsibilities that satisfy us that they are not mere leadworkers.

We are persuaded that the vehicle maintenance supervisor and the crew leaders can effectively recommend several of the procedures listed in factor (1) above, namely



hiring and firing of employees. First, with regard to hiring, we note at the outset that the vehicle maintenance supervisor and crew leaders are not empowered to hire on their own volition. Nevertheless, they have significant input into the hiring process. Specifically, they determine who they want to interview from the list of pre-screened candidates, then they sit on the interview board that does the actual interviewing, and then they rank the candidates in order of preference. While the Director of the Department of Public Works makes the actual decision on who to hire, his decision is based on the recommendations of the hiring board. Insofar as the record shows, the candidate ranked number one by the interview/hiring board has been hired.

Second, with regard to firing, we again note at the outset that the vehicle maintenance supervisor and crew leaders are not empowered to fire employees on their own volition. Nevertheless, in the one instance documented in the record, a crew leader had significant input into making the decision to discharge an employee. Specifically, he made the initial recommendation that an employee be fired and that is what ultimately occurred. Although the record does not contain any other instances of discipline being recommended or imposed by crew leaders, we believe it logical to assume that if someone is empowered to recommend discharge, as a crew leader did, they must also be able to effectively recommend lesser forms of discipline. The record is silent concerning any discipline imposed by the vehicle maintenance supervisor. Be that as it may, the vehicle maintenance supervisor is higher in the Employer's chain of command than is the crew leader. That being so, we believe it stands to reason that the vehicle maintenance supervisor must have the same ability to recommend discipline of employees as do the crew leaders.

Third, although the vehicle maintenance supervisor and crew leaders do not "promote" per se, the evaluations which they prepare are used to determine merit increases for those employees being evaluated. We find that the authority to award merit pay is certainly indicative of supervisory status. In making this finding, we are well

aware of prior Board cases where we held that the preparation of evaluation forms was a minor factor which did not indicate supervisory status.<sup>2</sup> However, those cases are easily distinguishable from the instant case on the grounds that in none of them was the evaluation directly tied to a merit increase, as is the case here.

Given the foregoing, we are persuaded that although the vehicle maintenance supervisor and crew leaders cannot hire or fire on their own volition, they can effectively recommend same.

### **DECISION**

It is the decision of the State Board of Mediation that the vehicle maintenance supervisor and three crew leaders at issue here are supervisory employees. They are therefore excluded from the agreed upon bargaining unit.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or

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<sup>2</sup> City of Sikeston, supra; Meramec Valley R-3 School District, Case No. R 88-001 (SBM 1987); Riverview Fire Protection District, Case No. R 87-017 (SBM 1987); and City of Frontenac, Case No. 86-010 (SBM 1986).

reinstated before the election. Those eligible to vote shall vote whether or not they desire to be represented for the purpose of exclusive recognition by IBEW, Local 702.

It is hereby ordered that the City shall submit to the Chairman of the State Board of Mediation, as well as to IBEW, Local 702, within fourteen (14) days from the date of receipt of this decision, an alphabetical list of names and addresses of employees in the agreed upon bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 10th day of June, 1992.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant

Mary L. Gant, Chairman

/s/ Milton O. Talent

Milton O. Talent, Employer Member

/s/ Donald Kelly

Donald N. Kelly, Employee Member